

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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IN RE: BAIR HUGGER FORCED AIR      MDL No.: 15-md-02666 (JNE/FLN)  
WARMING PRODUCT LIABILITY  
LITIGATION

This Document Relates To:

NANCY KEY,

Civil Action No.: 17-CV-04779-JNE-FLN

Plaintiff,

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**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

NOW COMES Plaintiff, Nancy Key, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 1387], and by and through undersigned counsel submits this, her Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

**FACTS AND ARGUMENT**

In April 2017, Mrs. Nancy Key contacted undersigned counsel regarding an infection and subsequent treatment that she experienced due to the use of a Bair Hugger patient warming device during an orthopedic surgery. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicated that a Bair Hugger device was used during the original surgery. On October 23, 2017, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.

Efforts to have Mrs. Key complete the Plaintiff Fact Sheet have been complicated by the inability to contact Plaintiff. While counsel has diligently continued their attempts to contact Mrs. Key and her husband James Key since December 2017, those efforts have not been successful to date. One possible reason is that Plaintiff may have passed away recently,<sup>1</sup> but counsel have not been able to reach her husband or other next of kin to confirm.

As a result, counsel has not been able to obtain the necessary information to complete the Plaintiff Fact Sheet for this claim. Counsel for Plaintiff believe that additional time could allow them to reestablish contact with Plaintiff or be able to reach next of kin, if Plaintiff has indeed passed away, and complete the Plaintiff Fact Sheet.

### **CONCLUSION**

Accordingly, undersigned counsel request that the current action not be dismissed with prejudice and that Plaintiff or her next of kin be given an additional ninety (90) days to contact counsel in order to provide the necessary information to cure any alleged deficiencies with the Plaintiff Fact Sheet and to continue the case.

Dated: August 9, 2018

KENNEDY HODGES, LLP

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ATTORNEYS FOR PLAINTIFF

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<sup>1</sup> <https://www.legacy.com/obituaries/name/nancy-key-obituary?pid=188855906>